

The Malaysian Government's Actions in Improving and Protecting the Rights of Foreign Workers in Peninsular Malaysia

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ABSTRACT

The rapid economic development has resulted in an influx of foreign workers in this country. Without their sweat, the construction of skyscraper buildings cannot be completed on time. low wages and their dedication in work make the employers prefer foreign workers compared to local workers. It is common for some employers to give bad treatment towards the foreign workers. Foreign workers have been denied the rights to wages, rest days, public holidays and other benefits under the law in Peninsular Malaysia. The objective of this research is to identify the actions of the Malaysian Government in improving and protecting the rights of foreign workers in Malaysia. This research used doctrinal research and the researchers used the primary and secondary data. The data comprise articles from journals, textbooks, and newspaper cutting. All the data collected have analysed descriptively and critically. The findings of the research showed that there have been violations of the rights of foreign workers in Peninsular Malaysia. The violation are as follows: violation of the right under a contract of service, violation of the right complaint against discrimination, violation of the right in dismissal, violation of the right in payment of wages, and

violation in relation to working hours, rest day, public holidays and annual leave. The other violations of the right towards foreign workers are violation to safety, health and welfare at workplace which includes violation to basic rights, violation of the right to compensation and violation of right under the passport Act 1966. The researchers have identified the actions of the government in improving and protecting the rights of foreign workers in Peninsular Malaysia. The major actions taken by the Malaysian government are firstly, through administrative action, secondly, by improving and protecting the rights of foreign workers under relevant legislations, thirdly, by improving and protecting the right of foreign workers in safety and health at workplace, fourthly, through legislative actions, fifthly, through diplomatic actions and finally, indirectly through decisions of the courts.

Keywords: *Rights, foreign workers, violations, actions, Malaysian Government.*

INTRODUCTION

The research carried out by the researchers showed that there have been violations of the rights of foreign workers in Peninsular Malaysia.¹ The violation are as follows: violation of the right under a contract of service, violation of the right complaint against discrimination, violation of the right in dismissal, violation of the right in payment of wages, and violation in relation to working hours, rest day, public holidays and annual leave. The other violations of the right towards foreign workers are violation to safety, health and welfare at workplace which includes violation to basic rights, violation of the right to compensation and violation of right under the passport Act 1966.

The government started to adopt minimal policy intervention in the mid 1980s but had resorted to substantive state control from the 1990s to regulate the absorption of foreign workers. In 1991, the government introduced a comprehensive policy on the recruitment of foreign workers which detailed the terms and conditions of employment and the recruitment process.²

There is an explicit national policy on foreign labour and a comprehensive range of policy instruments to protect the foreign workers from abuse and exploitation. Several strategies were also pursued by the government and multitude of agencies engaged in the recruitment of the foreign workers.³

This study seeks to identify the actions of government in improving and protecting the rights of foreign workers in Peninsular Malaysia.

The Malaysian Government's Actions

The researchers classified the actions of government into legislative, administrative, diplomatic and judicial actions.

Administrative Action

The government in improving and protecting the rights of foreign workers has introduced the induction course, established the cabinet committee on foreign workers and immigrants, made a plan to impose security bond on employer and enforced labour laws to ensure foreign workers do enjoy the protection and benefits given under relevant legislations.

Compulsory Induction Course for Foreign Workers

The government has introduced a new measure to expose foreign workers on Malaysian law and culture to ensure foreign workers are not expose to abuse and are able to better integrate in the Malaysian work environment.⁴ This is to ensure that the source countries take responsibility for ensuring their workers have some basic information on Malaysian culture and laws before coming to work.⁵

The Memorandum of Understanding (MoU) between the government of Malaysia and the government of source country regarding to the recruitment of workers stipulated that all foreign workers must comply with Malaysian laws, regulations and immigration procedures and possess sufficient knowledge of culture and social practices of the host country. The factors identified which contributed to social problems and problems at workplace were:

1. Misunderstandings among the foreign workers due to inability to communicate in Malay or English; and
2. Lack of understanding of laws and regulations of this country and lack of knowledge of Malaysian culture.⁶

Mandatory Requirement to Pass and Complete the Induction Course

The government in order to comply with provisions of the MoU, requires foreign workers to attend an induction course on communication skills, Malaysian laws, regulations and culture.⁷ Foreign workers are required to attend a ten days pre-departure induction course in their home country on the area mentioned before. For those who already in this country are required to attend an intensive three days induction course. Indonesians are exempt from the language requirement because the two dialects spoken in the neighboring countries are similar.

The foreign workers who pass and complete the induction course will receive Certificate of Eligibility from the National Vocational Training Council. This Certificate is pre-requisite and mandatory to:

1. Enable new foreign workers to obtain a calling visa ; and
2. Enable foreign workers to extend work permit.

Workers from countries such as Vietnam, Thailand, Bangladesh, China, Cambodia, the Philippines and Laos have already undergone a similar course in their countries before being sent to this country.⁸ This induction course is one of the government actions to improve adherence with the standards of workplace safety and health, get better knowledge of their rights under Malaysian laws and to promote good social relations.

Starting from 2010, the new batch of foreign maids and employers must attend a half-day course to learn about their respective responsibilities. The employers and foreign maids are required to attend the course which aimed at reducing the cases of abuse towards foreign maids.⁹ The Manpower Department will fix one day on every month for the course to be organized at selected areas in the country.¹⁰

Establishment of Cabinet Committee on Foreign Workers and Immigrants

The government gave serious attention on the issue of foreign workers and was evidenced by the establishment of the Cabinet Committee on Foreign Workers and Immigrants headed and chaired by the Deputy Prime Minister. The other members were made up of representatives from various government agencies on issues concerning foreign workers and immigrants.

In 1991, the Cabinet Committee on Foreign Workers and Immigrants implemented a five year policy on what were called 'guest worker.' The policy included measure ensuring the employers to offer wages and benefits equal to local employees.¹¹ Among efforts taken by the said Committee in promoting the rights of the foreign workers are to review guidelines on hiring foreign workers and to study a plan in order to impose security bond on employer to ensure they are responsible for the foreign workers.¹²

Guidelines on Hiring Foreign Workers to be reviewed by the cabinet committee on Foreign Workers and Immigrants

The Cabinet Committee on Foreign Workers will review the guidelines on hiring foreign workers to ensure they are not victimized in this country.

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Among the guidelines to be looked into include proper housing and the right of foreign workers to be insured. The Home Minister, Datuk Seri Ahmad Zahid Hamidi said “despite compulsory insurance coverage for foreign workers, it is still insufficient due to the low premium paid.”¹³ The discussion involving all stakeholders including insurance companies will be held to discuss how the foreign workers can be given more coverage for their medical expenditure.

The said Minister opined that the foreign workers should not be victimized and must be given fair treatment as they are the workforce that assists the country's economic growth. Datuk Seri Ahmad Zahid Hamidi added that the government would like to look into all aspect such as legal, welfare and humanitarian towards foreign workers.¹⁴

Plan to Impose Security Bond on the Employers

Other aspect to be looked by the Cabinet Committee on Foreign Workers is imposing security bond on the employers who hire foreign workers as to ensure they are responsible for the foreign workers. The government is studying whether the law on foreign workers in the United Arab Emirates (UAE) is suitable for Malaysia.¹⁵ The UAE was said to manage their foreign workers very well even there were 4.6 million foreign workers as opposed to 500,000 local residents.¹⁶ The Immigration Department was asked to look into this matter and conduct a comparison on the system used in countries such as the United Arab Emirates and Singapore.¹⁷

The Action of Government in Improving and Protecting the Rights of Foreign Workers Under Relevant Legislations

The Ministry of Human Resource implements labour policies and enforce labour laws to ensure all foreign workers enjoy the protection and benefits giving under the EA 1955, the WCA 1952, the IRA 1967 and the OSHA 1994. Human Resource Minister, Dr S. Subramanian said a better monitoring system should be worked out to ensure the rights of foreign workers would always be protected.¹⁸

The action of Government in Improving and Protecting the Right of Foreign Workers Under the Employment act 1955

In 1998, the EA 1955 was amended and a new part of ‘Employment of Foreign Employees’ could be regarded as providing a measure of protection to foreign workers.¹⁹ The provision under section 60L of the EA 1955 empowers the Director General to enquire any complaint from a foreign employee that he is

being discriminated in relation to the terms and conditions of the employment. The Director General is empowered to issue to the employer such directives 'as may be necessary or expedient to resolve the matter.'

Apart from that, the foreign workers can access the adjudicating and enforcement mechanism under Part XV of the EA 1955 in respect of '...wages or any other payments in cash...' due to such employee under his 'contract of service' or under the Act.²⁰ This access to the Director General of Labour's and also known as 'Labour Court' is a cheap and speedy remedy for both local and foreign employees to enforce their contractual and statutory rights under the said Acts.²¹

The law empowers the Director General of Labour to investigate discrimination and unfair treatment of foreign workers under the EA 1955.²² Each employer is required to submit information and returns pertaining to the employment of foreign workers. Section 60K (1) of the EA 1955 provides an employer within fourteen days of employment must furnish the particulars of the foreign workers to the Director General. The new provision was also introduced to protect the wages of domestic workers²³ including foreign domestic workers.

The Labour Department and the Ministry of Human Recourse had adopted measures to ensure foreign workers were protected including monitoring employer's record and enforcement of laws on errant employers. In 2011, enforcement officers inspected 2,854 premises that had foreign workers and 328 were found to have violated the laws.²⁴ 53,055 employers were screened, 106 were fined more than RM200,000.00 and 136 were paid fines amounting to RM414,000.00.²⁵

Labour Court

The Labour Court is a mechanism implemented by the Department of Labour and an alternative to the civil claims. The main objective of the Labour Court is to provide labour justice system which is fair, inexpensive and fast for workers. Foreign workers may lodge claims on financial benefits and wages. All labour cases must be decided within one to three months. Such cases will depend on the legislation involved and the complexity of the issue. The examples of cases heard and determined by the Director General of Labour or referred to as the 'Labour Court' are:

1. Claims of overtime, public holidays, rest days and annual leave payments;
2. Terms or conditions under the contract which are less favourable than prescribed by the EA 1955; and

3. Issue of whether the relationship between contracting parties was a contract of service or contract for service.

The Action of Government in Improving and Protecting the Right of Foreign Workers Under the Workmen's Compensation act 1952

The WCA 1952 was administered by the Department of Labour. Section 26(1) of the WCA 1952 provides the employers must ensure that the foreign workers are insured with the panel insurance company appointed under the Foreign Workers' Compensation Scheme by the Minister of Human Resources. Failure on the part of the employers to do so is an offence and if convicted, the employer will be fined not more than RM20,000.00 or jailed for not more than two years or both.²⁶ The Labour Department has taken the initiative to develop e-Compensation system to ease the process and the management of foreign worker's compensation cases.²⁷ The system also indirectly acts as the main database for foreign workers who are insured under the Foreign Workers' Compensation Scheme. In 2010, around 1,003,865 of foreign workers have been insured under the Foreign Workers' Compensation Scheme.²⁸

The Action of Government in Improving and Protecting the Right of Foreign Workers in Safety and Health at Workplace

Within the Ministry of Human Resource, the Department of Occupational Safety and Health is responsible for developing occupational safety and health at workplace. The Department of Occupational Safety and Health divides its role into two: ²⁹

1. Safe use of chemicals at the workplace and effects on the public; and
2. Occupational health.

In performing the first role, the DOSH has developed a generic chemical hazardous to health are being used and their risk and control measures, a simple risk assessment and control and a code of practice on Indoor Air Quality.³⁰ The DOSH also has established the Occupational Health Division to meet legal requirements and to encourage the adoption of health promotion and health protection in all workplaces. This division conducts investigation, monitor the occupational disease and poisoning notifications, analyses occupational disease and poisoning report from other states in Malaysia. The Occupational Health Division also provides seminars and dialogues to increase awareness on occupational health among all employers and workers including foreign workers.

Furthermore, the Occupational Health Division develops codes of practices and guidelines at the workplace. For example, a Code of Practice on Prevention and Eradication of Drug Abuse, Alcohol and Substance was developed in the Workplace to assist employers and workers to meet their responsibilities under the OSHA 1994.³¹

The Action of Government in Improving and Protecting the Right of Foreign Workers Under the Industrial Relations act 1967

The right to claim for reinstatement in the IRA 1967 is only afforded to private sector employees. It applies to all employees working legally both Malaysian citizens as well as foreigners with work permits. A significant number of foreign workers have successfully fought claims of dismissal without just cause or excuse.³² The court may award reinstatement if the dismissal is held to be without just cause or excuse. If reinstatement is impracticable, the court may award compensation in term of monies. Foreign workers may refer to the Industrial Court for adjudication³³ in cases of:

1. Questions of law to the High Court;
2. Complaints of non-compliance of the terms of the award; and
3. Interpretation or variation of the term of the award.

Diplomatic Action

In order to strengthen the relationship between the host country and source country, Malaysia put an effort and signed a number of Memorandum of Understanding (MoU) with China, Indonesia, Bangladesh, Thailand, Sri Lanka, Pakistan and Vietnam.

MEMORANDUM OF UNDERSTANDING WITH THE SOURCE COUNTRIES

It should be noted that the main purpose of the MoU is to establish a framework which facilitates the recruitment and selection of workers from the source countries and to establish guidelines on how they should be treated in the host country. There are three basic elements in the MoU, namely the responsibilities of all the parties involved such as employers, government/ licensed recruitment agency of the sending country and the workers.

The Responsibilities of Employers in Memorandum of Understanding

Employers can recruit through or directly the Ministry of Labour of the source countries. The responsibilities of the employers are:

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1. Obtain approval from the relevant authorities in Peninsular Malaysia;
2. Pay the transportation cost of the workers from the entry point in Peninsular Malaysia to the place of employment;
3. Prepare the contract of employment which includes the terms and condition of employment and basic wages;
4. Pay security deposit to the Department of Immigration; renew the pass of the foreign workers at least one month before the contract ends;
5. Provide basic facilities and accommodation to the workers parallel to the requirement of labour laws; and
6. Arrange for the funeral or the repatriation of the deceased at the expense of the employer as provided under the WCA 1952.

In order to improve the employment of foreign workers, item vi was inserted in the MoU to ensure the requirement of EA 1955 and the OSHA 1994 being complied with by the employers. In addition, item vii is the one of responsibilities of the employers stated under the WCA 1952.

The Responsibilities of the Government/Licensed Recruitment Agency of the Source Countries in Memorandum of Understanding

The responsibilities of the Government/Licensed Recruitment Agency of the source country are:

1. To provide workers as required by the employers;
2. Facilitate the workers to attend the induction course, obtain travel document and arrange medical check-up in the sending country;
3. Ensure the terms and conditions of the contract of employment are explained and understood by the worker; and
4. Recognize the right of the employers to determine the terms and conditions of the contract of employment.

Item iii and iv in the MoU are among the efforts made by the government in improving and protecting the rights of foreign workers which relate to the contract of employment.

The MoU also set out the basic terms of the contract of employment which includes the details of the employee, employer, leaves, working hours and other benefits entitle to foreign workers with regards to the labour laws in host country. For the purpose of this research, the researcher only laid down the MoU between Malaysia and another two source countries; Bangladesh and Indonesia.

Memorandum of Understanding between Malaysia and Bangladesh

Malaysia and Bangladesh signed a Memorandum of Understanding in December, 2012 on recruiting workers for the plantation sector. About 1.4 million Bangladeshi had registered to work in Malaysia.³⁴ The new MoU will replace the earlier MoU which has been signed between the two countries in 2003.

Government to Government Mechanism on Foreign Workers

Malaysia had signed a memorandum of understanding with Bangladesh and agreed to lift a five-year freeze on the recruitment of Bangladeshi workers.³⁵ The hiring will be limited to the plantation sector and will be carried out through a Government-to-Government (G-to-G) arrangement. The effort will eliminate the involvement of third parties including agents outsourcing companies and the workers will directly hired by the employers. Instead, the recruitment process will be confine to agencies which is designated by both governments.

There has been suggestion to adopt a blanket of the G-to-G arrangement for all sectors with the issue of mistreatment on foreign workers being highlighted by media. Some viewed the G-to-G arrangement could prevent agents from abusing foreign workers. Malaysia is monitoring the effectiveness of the G-to-G mechanism to hire workers as this mechanism would be conducted on a three months trial basis.³⁶ “If the mechanism proves successful after the first three months of its implementation, the government may consider reviewing this policy to expand such exercise to cover the other economic sectors,” said Human Resource Minister, Datuk Seri S.Subramanian.³⁷

Memorandum of Understanding between Malaysia and Indonesia

Malaysia has signed the Medan Agreement with Indonesia in 1984, the largest source country during that period. Domestic workers from Indonesia in particular remain isolated and open to abuse. Indonesia stopped sending its workers to Malaysia following several incidents of maltreatment and nonpayment of wages. The 2009 ban has been lifted by a letter of intent which was signed between the two countries in 2010.³⁸ Accordingly, the recruitment of domestic works resumed in December 2011 after two countries signed an amendment to the bilateral MoU. This new agreement guarantees the workers one day off a week, right to retain the passport and payment of wages on a monthly basis.³⁹

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Recently, the government has proposed to set RM8,000.00 for the cost to bring in the Indonesian domestic workers.⁴⁰ “The MoU signed in 2011 can be revived,” said Deputy Prime Minister, Tan Sri Muhyuddin Yassin.⁴¹ The previous cost of hiring the domestic workers was RM4,511.00 and the new cost considers the 200 hours training, documentation cost, food and lodging before being sent over to the employer. However, the protocols of the 2011 MoU must be adhered to including health of the foreign workers, the replacement of maid who have absconded, the fixed rate of salary, the compulsory off day and the right to hold passports.⁴²

Legislative Action

In improving and protecting the rights of foreign workers involving legislative action, the government enacted the Minimum Wages Order 2012(MWO 2012). This order is only applicable to an employee under a contract of service and applies to local and foreign workers. However, domestic servant was excluded from receiving minimum wages as provides under para 3 of the MWO 2012.

The Minimum Wages Order 2012

As mentioned above, the MWO 2012 was enacted by the government to improve and protect the rights of foreign workers. The following discussions focus on the enforcement of the MWO 2012 and power to review the MWO 2012.

Enforcement of the Minimum Wages Order 2012

National Wages Consultative Council Act 2011 confers power on the enforcement officers of the Labour Department to carry out investigations, conduct any inquiry and enforce the MWO 2012.⁴³

Power to Review the Minimum Wages Order 2012

National Wages Consultative Council has power to review the MWO 2012 in every two years as stated under section 25(1) of the National Wages Consultative Council Act 2011 upon direction of the government or when the Council thinks it may necessary review the minimum wages.

Judiciary Action

In improving and protecting the rights of the foreign workers, the court has made it clear in the case of *Goon Kwee Phoy v. J & P Coats Bhd* ⁴⁴

where dismissal and termination must be based on just cause or excuse. Raja Azlan Shah CJ opined that it is the duty of the court to determine whether the termination or dismissal is with or without just cause of excuse in cases where representations are made and be referred to the Industrial Court for enquiry.

CONCLUSION

The researchers have identified the actions of the government in improving and protecting the rights of foreign workers in Peninsular Malaysia. The major actions taken by the Malaysian government are firstly, through administrative action, secondly, by improving and protecting the rights of foreign workers under relevant legislations, thirdly, by improving and protecting the right of foreign workers in safety and health at workplace, fourthly, through legislative actions, fifthly, through diplomatic actions and finally, indirectly through decisions of the courts.

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